

Ag leases need to be in writing

By Kay Ledbetter

Special to The News-Courier

AMARILLO—Get it in writing. That may be the single most important item to remember when preparing agricultural leases.

Tiffany Dowell Lashmet, Agriculture Extension agricultural law specialist in Amarillo, said regardless if you have known the person all your life or are just meeting them, a written lease clarifies things.

"You never know what might happen between two folks with an oral lease, even if they are family or the best of friends," she said. "Lease agreements certainly do not have to be lengthy and complex, but there are some terms you need to include to protect both sides."

Dowell Lashmet said writing things down can also remind both parties of issues or situations they need to agree on before they shake on the deal.

Some she pointed out include:

Forum clause

"If you have a tenant who doesn't live in your area, you are identifying where you want any legal forum to be if there becomes an issue that requires court action."

Dispute resolution clause

"Suing people is expensive; consider a method of avoiding court and settling the case beforehand through mediation or arbitration. These are two very different things — mediation has a third party involved and if both parties agree to settle, it's written up and everyone goes home, or if they don't, they go to court. But in arbitration, the arbitrator hears both sides of the case and then the arbitrator picks a winner and you are done. Generally you can't go to court after that. Make sure you know what you are agreeing to."

Attorney fee provision

"If you clarify that in a court situ-

ation the prevailing party can recover attorney fees, you can pursue that, otherwise each are on their own."

Setting a stocking rate

"If you lease me 300 acres and don't tell me how many cattle I can put on it, I will likely put everything I own on that land. The landowner wants this term, the tenant probably does not. Also be very clear on size, weight or animal units allowed. Be aware that this number may need to change based on drought or wildfire."

Term of lease and cancellation

"There are two typical lease types when dealing with grazing leases — tenancy for term or periodic tenancy. Term has a start and end date, that's it. Periodic has a start and end date that renews itself unless one party gives written notice. Make notice of cancellation be in writing. Set a time when the notice is due."

What may be done on the property?

"If limitations are not included on the lease, they don't exist. Put it in the lease if you want it clarified. Can kids ride four-wheelers? Can anyone hunt or is it for grazing purposes only? Do they have access to corrals or just pasture? Spell out who has hunting rights or you will have a tense situation in November when deer season opens."

Maintenance of fixed assets

"Who has to maintain things? Who has to pay for it? You can do whatever you want, but spell it out in the lease. Fences are a big deal. Who is required to maintain those fences and make sure periodic inspections are done?"